
(1967) 09 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Regular Second appeal No. 1189 of 1963

Ghansham Dass and Others

APPELLANT

Vs

Municipal Committee and Others

RESPONDENT

Date of Decision : 26-09-1967

Acts Referred:

Government of India Act, 1915 — Section 80A(3)

Punjab Municipal Act, 1911 — Section 3(1), 61, 61(1), 61(2), 61(3)

Citation : (1968) 1 ILR (P&H) 488 : (1967) 69 PLR 1007

Hon'ble Judges : Prem Chand Pandit, J

Bench : Single Bench

Advocate : J.N. Kaushal and M.R. Agnihotri, for the Appellant; H.L. Sarain Balraj Bahl and Bahl Singh Malik, for the Respondent

Final Decision : Dismissed

Judgement

Prem Chand Pandit, J.—There is no dispute between the counsel for the parties about the facts in this Regular Second Appeal and the only question that has been argued before me is one of law.

2. On 21st of May, 1955, by a notification, the Governor of Punjab issued a special order directing the Municipal Committee, Bhiwani, district Hissar, Defendant, to impose house tax on the owners of buildings and lands in the town of Bhiwani. These directions had been issued probably to increase the income of the Committee. Since the said Committee did not carry out the orders of the Government, they, on 10th of April, 1956, issued another notification, acting u/s 62-A of the Punjab Municipal Act, 1911 (hereinafter called the Act). The relevant part of this notification reads as under:

The Municipal Committee, Bhiwani, in the Hissar District having failed to carry out the directions contained in the special order of the Governor of Punjab, notified in Punjab Government notification No. 10311-C-54/28762, dated the 21st May, 1955, the Governor of Punjab, in exercise of the powers conferred on him by Sub-section (3) of Section 62-A of the Punjab Municipal Act, 1911, is

pleaded to notify the imposition of House-tax payable by the owners of buildings and lands at the rate of 6 1/4 per cent per annum on their annual value as defined in Sub-section (1) of Section 3 of the said Act, provided the under-mentioned property shall be exempted from the payment of this tax:

3. Under the provisions of Section 62-A(3) of the Act this notification of the Government had to operate as if it were a resolution duly passed by the Committee and the tax had to be deemed to have been levied by the Committee with the sanction of the Government. In pursuance of this notification, lists of assessments were prepared by the Committee and the recovery of the tax was going to be started. Thereupon, Ghansham Dass and others, residents of the town of Bhiwani, brought a suit against the Committee for a mandatory injunction restraining the Defendant-Committee from realising the tax from the Plaintiffs, on the ground that the same was illegal and ultra vires and could not be imposed on them.

4. This suit was contested by the Committee which pleaded that the said tax had been validly imposed on the Plaintiffs and the Defendant had a right to realise the same from them.

5. The trial Judge decreed the suit holding that the house-tax imposed was illegal and ultra vires. The learned Senior Subordinate Judge, on appeal, however, reversed the decision of the trial court and dismissed the Plaintiff's suit on the finding that the said tax was neither unlawful nor unjustified. The Plaintiffs have come here in second appeal.

6. The contention raised by the learned Counsel for the Appellants was that admittedly the Committee had imposed water tax at the rate of rupees 3 and annas 2 per cent per annum on the value of all buildings situate within the limits of the municipality of Bhiwani with effect from 25th of July, 1936. After the imposition of that tax, the Government could not suo motu impose the house-tax under the provisions of Section 62-A(3) of the Act. His argument was that the Government can impose tax u/s 62-A(3) only after the Committee had failed to carry out any valid order passed under Sub-section (1) of Section 62-A. In the instant case, the Government could not legally require the Committee to impose house-tax under Sub-section (1) of Section 62-A, when the Committee had already imposed water-tax in 1936, because, u/s 62-A(1), the State Government can require the Committee to impose any tax mentioned in Section 61 which was not already imposed. The water tax, in the present case, had already been imposed by the Committee and this tax fell within the taxes mentioned in Section 61.

7. It is undisputed that the water-tax had been imposed by the Committee by means of the Punjab Government notification, dated 18th of April, 1936, the relevant part of which is as follows:

In pursuance of the provisions of Sub-section (1) of Section 62 of the Punjab Municipal Act, 1911, it is hereby notified that with the previous sanction of the

Punjab Government (Ministry of Local Self-Government), the Municipal Committee of Bhiwani, in the Hissar District, has imposed a water-tax at the rate of rupees three and annas two per cent, per annum, on the annual value of all buildings situated in the limits of the Municipality of Bhiwani, with effect from the 25th July, 1936, provided that no tax shall be levied in respect of the following:

8. It would be seen that this tax was imposed with the previous sanction of the Punjab Government. Section 62 of the Act deals with the procedure for imposing taxes, while Section 61 mentions the various taxes which might be imposed by the Committee. The relevant part of these sections, as they stood in 1936 when the above notification was issued, read as under:

61. Subject to any general or special orders which the Local Government may make in this behalf, and to the rules, any committee may, from time to time for the purposes of this Act, and in the manner directed by this Act, impose in the whole or any part of the municipality any of the following taxes, namely:

(1)(a) a tax payable by the owner, on building and lands-

(i) not exceeding twelve-and-a-half per centum on the annual value; (ii)*****

(iii) * * * * *

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(e) * * *

(f)* * *

9. Provided that a committee shall not impose any tax without the previous sanction of the Local Government when-

(i) it consists of members less than three-fourths of whom have been elected, or

(ii) its cash balances have, at any time within the three months preceding the date of the passing of the resolution imposing the tax, fallen below Rs. 20,000 or one-tenth of the income accrued in the previous financial year, whichever amount shall be less.

(2) Save as provided in the foregoing clause, with the previous sanction of the Local Government any other tax which under rules made under Clause (a) of Sub-section (3) of Section 80-A of the Government of India Act, a local authority may be authorised to impose by any law made by the local legislature without the previous sanction of the Governor-General.

(3) With the previous sanction of the Local Government and of the Governor-

General in Council, any tax.

62. (1) A Committee may, at a special meeting, pass a resolution to propose the imposition of any tax u/s 61.

(2) * * *

(3) * * * (12) * * *

10. A perusal of the above provisions would show that the previous sanction of the Punjab Government for the levy of the tax was required under three contingencies, namely, if the case was covered by-(a) provisos (i) and (ii) to Sub-section (1), (b) Sub-section (2) and (c) Sub-section (3) of Section 61. It has not been proved by the Plaintiffs in this case that the water-tax was covered by the provisions of Section 61(1)(a)(i). It may well have been, as contended by the learned Counsel for the Defendant, that this tax fell within 61(2) and that is why it was levied with the previous sanction of the Punjab Government, as mentioned in the notification. It was for the Plaintiffs to show that this tax fell within the provisions of Section 61(1)(a) (i) and previous sanction of the Government was required, because the case was covered by either of the two provisos (i) and (ii) to Sub-section (1) of Section 61. They, having failed to establish this fact, it shall have to be presumed that the previous sanction of the Government was obtained because this tax was covered by Section 61(2) of the Act. If that be the position, then the house-tax covered by the impugned notification dated 10th of April, 1956, issued by the Punjab Government, would be valid, inasmuch as u/s 62-A, the State Government could require the committee to impose any tax mentioned in Section 61 not already imposed. It is the common case of the parties that the house-tax was covered by Section 61(1)(a)(i) and the water-tax, as I have already held above, fell within the provisions of Section 61(2) of the Act and not Section 61(1)(a)(i). It means, no tax u/s 61(1)(a)(i) had been previously imposed by the Committee and that is why the Government could issue valid directions to it u/s 62-A(1) for imposing the house-tax which was covered by Section 61(1)(a)(i). Since the committee failed to carry out this order mentioned in the notification dated 21st May, 1955, the Government could issue the notification dated 10th April, 1956, thereby itself imposing this tax.

11. Assuming, however, for the sake of argument that the water-tax previously levied by the committee was also covered by the provisions of Section 61(1)(a) (i), can it be said that the State Government could not issue valid instructions u/s 62-A(1) requiring the committee to impose the house-tax which was also covered by the same provision ? Section 62-A says-

62-A (1) The State Government, may, by special or general order notified in the official Gazette, require a Committee to impose any tax mentioned in Section 61, not imposed at such rate and within such period as may be specified in the notification and the Committee shall thereupon act accordingly.

(2) The State Government may require a Committee to modify the rate of any

tax already imposed and thereupon the Committee shall modify the tax as required within such period as the State Government may direct.

(3) If the Committee fails to carry out any order passed under Sub-section (1) or (2) the State Government may, by a suitable order notified in the official Gazette, impose or modify the tax. The order so passed shall operate as if it were a resolution duly passed by the Committee and as if the proposal was sanctioned in accordance with the procedure contained in Section 62.

12. The argument of the learned Counsel for the Appellants was that u/s 61(1) (a), the Committee could levy only one tax which was payable by the owner on buildings and lands and it could not exceed 12 1/2 per cent on the annual value of such buildings and lands. He submitted that the water-tax previously imposed by the Committee at the rate of 3 1/8 per cent per annum on the annual value of the buildings could be increased to 12 1/2 per cent on the annual value by the Government by taking proceedings u/s 62-A (2) and (3) but no fresh tax could be levied on the owner of such buildings and lands. Since the Government did not take any action under Sub-section (2) of Section 62-A, but imposed the house-tax under Sub-section (3) of Section 62-A after issuing an order u/s 62-A(1), the said imposition, according to the learned Counsel, was illegal. There does not seem to be any merit in this contention as well. When Section 61(1)(a) (i) talks of a tax payable by the owner on buildings and lands, not exceeding 12 1/2 per cent on the annual value, it, in my opinion, means that the outside limit of 12 1/2 per cent on the annual value has been fixed by the Government for the imposition of the tax on the buildings and lands. The tax payable by the owner on buildings and lands can be split up into various categories and given different names as, e.g., house-tax and water-tax, but there is one limitation fixed by the statute and that is that all these taxes on lands and buildings taken together should not exceed 12 1/2 per cent of their annual value. Even on the argument of the learned Counsel for the Appellants, the Government can increase the water-tax to 12 1/2 per cent. That means that by the imposition of the house-tax at the rate of 6 1/4 per cent the Plaintiffs had not suffered any material loss, because if this tax is added to the water-tax already imposed, the total will not exceed 12 1/2 per cent. It does not stand to reason that it was the intention of the legislature that the water-tax alone or for the matter of that any tax, which was imposed in the first instance, that alone could be increased to the limit of 12 1/2 per cent and no other tax on the lands and buildings could be levied even though the two taxes taken together would not exceed that limit. When the legislature is using the word "a tax" in Section 61(1)(a), it was referring to "tax" on buildings and lands. In other words, the owner of the buildings and lands could not be asked to pay more than a maximum of 12 1/2 per cent on their annual value. The outside limit of 12 1/2 per cent cannot be crossed though the tax on the buildings and lands may be collected under different heads. In my view, therefore, the Government was well within its right to issue the directions u/s 62-A(I) on 21st May, 1955 and since the Committee failed to carry them out, the Government validly imposed the house-tax by means of the notification dated

10th April, 1956, u/s 62-A (3).

13. It may be mentioned that both the grounds raised by the learned Counsel for the Appellants during the course of the arguments, were not taken in the grounds of appeal filed in this Court. Since the point was one of pure law, I permitted him to argue the same.

14. In view of what I have said above, this appeal fails and is dismissed. In the circumstances of this case, however. I leave the parties to bear their own costs throughout.